



# MAINE REVENUE SERVICES

## SALES, FUEL & SPECIAL TAX DIVISION

### INSTRUCTIONAL BULLETIN NO. 14

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#### SEED, FEED, FERTILIZER AND OTHER ITEMS USED IN AGRICULTURAL AND AQUACULTURAL PRODUCTION

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This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers with respect to sales of agricultural and aquacultural products. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

#### 1. PRODUCTS USED IN AQUACULTURAL PRODUCTION

Aquaculture is the farming of freshwater or saltwater organisms such as salmon, oysters, mussels, and seaweed. Also known as “aquafarming,” aquaculture involves the cultivating of aquatic populations under controlled conditions, as contrasted with commercial fishing, where the conditions are not controlled. Sales of feed, hormones, pesticides, antibiotics, and medicines used in aquacultural production, and bait sold to commercial fishermen, are exempt from sales or use tax. The exemption does not apply to items purchased by persons who are not engaged in aquacultural production. For example, the exemption does not apply to items used by aquariums or zoos.

**A. Feed.** Feed includes feed for lobsters in tidal circulating lobster pounds. The exemption does not apply to sales of water or feed for lobsters kept in tanks for sale.

**B. Antibiotics and medicines.** Sales of medicines used for the treatment of animals, fish, and shellfish in the course of aquacultural production, including antibiotics used for the treatment of lobsters kept in tidal circulating lobster pounds, are exempt.

**C. Bait sold to commercial fishermen.** Sales of bait to commercial fishermen who hold a valid Maine Commercial Fishing Exemption card are exempt from sales or use tax.

## **2. PRODUCTS USED IN COMMERCIAL AGRICULTURAL AND SILVICULTURAL CROP PRODUCTION**

Sales of seed, fertilizer, defoliant, pesticides, insecticides, fungicides, and weed killers for use in commercial agricultural production of crops, are exempt from sales or use tax. “Crops” includes plants raised for animal or human consumption. Sales of these products are also exempt when purchased for use in commercial silviculture (tree farming). “Silviculture” means the cultivation of forest trees to be harvested for commercial sale or use.

The Sales and Use Tax Law does not exempt from tax the sale of flower seeds, lawn seed, or shrubs, trees, and plants of any kind except when sold for resale as tangible personal property. Sales of plant seedlings are not exempt, except for tree seedlings used in commercial forestry.

The exemption does not apply to sales of items that are not purchased for use in commercial agricultural or silvicultural production. For example, items purchased by a farmer or any other individual for use in a home garden or other noncommercial use are subject to tax.

**A. Seed.** “Seed” includes tubers, bulbs and corms used as seeds. The exemption includes all seed sold for producing plants that ultimately and primarily produce a product for human or animal consumption. The term “seed” does not include seedlings.

**B. Pesticides.** Sales of poisons intended for the destruction of rodents and other animals that are damaging to commercial crops, such as rat poisons, woodchuck bombs, and pesticides used in commercial tree farming, are exempt, but sales of repellents of any kind are not exempt.

**C. Insecticides.** Sales of preparations intended for the destruction of insects harmful to commercial crops or to trees grown commercially are not taxable. The exemption does not apply to products intended for household use, such as mothballs, ant traps, and insecticides in aerosol containers, or to preparations intended for personal use, such as insect repellents.

**D. Fungicides, weed killers and defoliants.** Mulch used for the purpose of weed suppression by a commercial farmer qualifies as an exempt weed killer.

## **3. PRODUCTS USED IN ANIMAL AGRICULTURE**

Sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, and litter for use in animal agricultural production are exempt from sales or use tax. For sales made on or after July 12, 2010, the exemption also covers antiseptics and cleaning agents used in commercial animal agricultural production.

“Animal agricultural production” includes:

- The keeping and raising of animals that are producers of food or that will become food products themselves, such as cows, pigs, chickens, bees, deer, game birds and goats;
- The keeping and raising of animals that are producers of other products, such as fur-bearing animals, sheep, llamas, alpacas, or deer for fleece or antler velvet; and
- The keeping and raising of equines (horses).

Although this exemption applies to noncommercial as well as commercial activities, it does not apply to the following types of businesses or activities as they do not constitute animal agricultural production:

Circuses	Carnivals
Aquariums	Breeding or raising of pets
Zoos	

**A. Medicine.** Medicine means a substance or preparation used in the prevention, diagnosis or treatment of disease or injury.

Medicine includes:

propylene glycol	Keto-gel
calcium	CMPK gel
electrolytes	Resorb
vitamin B (when used to prevent metabolic disorders)	
antiseptics	Chap-shield and Chap-guard.

Medicine does not include:

Ointments, creams, and salves that do not contain medicine	
Vitamins	California Mastitis Test
Stronghold	Orbeseal
Booster Calf	

**B. Pesticides.** A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests. Traps, such as fly tapes, are not pesticides.

**C. Litter.** "Litter" includes wood shaving, sawdust, and other organic bedding materials such as hay.

#### **4. SALES OF ANIMALS, FISH & SHELLFISH**

The retail sale of all animals, except those that are being raised as food products or for food production or those that are producers of other products, are taxable transactions. The sale of any animal by a person not engaged in making retail sales is considered a casual sale that is not subject to tax. Some examples of taxable transactions are:

- A. Sales by pet stores of animals and fish;
- B. Sales by animal breeders of animals such as dogs, cats, and horses;
- C. Sales of horses at claiming races;
- D. Sales of bait used in sport fishing.

#### **5. FUEL FOR BURNING BLUEBERRY FIELDS**

Sales of all fuels used in burning blueberry lands are exempt. In order to document the exempt sale, the retailer should obtain a signed statement from the purchaser describing its business activity and the fact that the fuel being purchased is to be used in burning blueberry fields.

## **6. OTHER ITEMS PURCHASED FOR USE IN AQUACULTURAL, AGRICULTURAL AND SILVICULTURAL PRODUCTION**

**A. Supply items.** There is no exemption for sales of supply items. This category includes items such as paper towels, rags, office supplies, lubricants, syringes and cleaning products.

**B. Baling Twine.** Purchases of baling twine are exempt as packaging material when the twine is used to bale hay that is held for sale (see Rule 301, "Sales for Retail and Sales of Packaging Materials"). However, twine used to bale hay that will be used by the farmer is taxable.

**C. Machinery and equipment.** For information regarding purchases of certain depreciable machinery and equipment and electricity used in commercial agriculture and commercial aquaculture, see Instructional Bulletins 45 and 49.

**D. Fuel.** Other than fuel described in Section 5 above, there is no exemption for sales of fuel oil.

## **7. AFFIDAVIT FOR CLAIM OF EXEMPTION**

An affidavit, as provided in this bulletin, must be presented to the seller and retained in the seller's file in order to document that the purchase is exempt from tax. It is not necessary for the purchaser to present an affidavit for each purchase as long as one copy of each purchaser's current affidavit is retained by the seller. Provided these documents are in the seller's file, the seller is relieved of the burden to charge tax on future purchases. However, the purchaser must inform the seller with each purchase whether the items purchased are exempt or taxable. By signing this affidavit, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. Misuse of the affidavit may subject the purchaser to prosecution.

## **8. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, ME 04332-1060  
TEL: (207) 624-9693  
TTY: (888) 577-6690**

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**Issued: September 1, 1951**

**Last Amended: January 10, 2011**

(Published under Appropriation 010-18F-0002-07)



## MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

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### AFFIDAVIT REGARDING PURCHASES OF CERTAIN PRODUCTS FOR USE IN SILVICULTURE, AGRICULTURE, FISHING, AQUACULTURE AND ANIMAL AGRICULTURE.

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I present this affidavit to \_\_\_\_\_ and certify under penalty of perjury that purchases made by me from this retailer:

- ☐ a. Constitute seed, fertilizers, defoliants, pesticides, rodenticides, insecticides, fungicides or weed killers to be used by me in the commercial production of a silvicultural crop.
- ☐ b. Constitute seed, fertilizers, defoliants, pesticides, rodenticides, insecticides, fungicides or weed killers to be used by me in the commercial production of an agricultural crop.
- ☐ c. Constitute feed, hormones, pesticides, antibiotics or medicine to be used by me in aquacultural production.
- ☐ d. Constitute breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, or litter to be used by me in animal agricultural production, including the raising and keeping of equines.
- ☐ e. Constitute bait for commercial fisherman.
- ☐ f. Constitute materials to be used by me in the construction, repair or maintenance of an animal waste storage facility.
- ☐ g. Constitute antiseptics and cleaning agents to be used by me in commercial animal agricultural production.

I believe these purchases are exempt from Maine sales and use tax. I agree to assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.

\_\_\_\_\_  
NAME OF PURCHASER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

NOTICE TO RETAILERS: Retailers making exempt sales covered by this certificate must appropriately mark or stamp all invoices to indicate whether they are exempt sales.

## GENERAL RESTRICTIONS FOR USE OF THIS AFFIDAVIT OF EXEMPT USE

This affidavit is to be retained in the records of the seller to document any sale claimed to be exempt under 36 M.R.S.A. § 1760, sub-§§ (7-A), (7-B), (7-C) and (81). A copy of this affidavit does not need to be obtained by the seller on each subsequent purchase. However, if the purchaser indicates that a certain purchase is believed to be exempt pursuant to this affidavit, the invoice must be appropriately marked to indicate the exempt sale.

This affidavit must be taken in good faith by the seller. The good faith of the seller will be questioned if the seller knows, or has reason to know, that the person making the purchase is not using the products for the intended exempted purpose.

This affidavit is valid only for purchases of the products identified under (a) through (f) on the reverse side. This affidavit may not be used for the tax-free purchase of the following items:

- (1) Machinery, equipment, repair parts and supplies
- (2) Products used in non-commercial production of silvicultural crops
- (3) Products used in non-commercial production of agricultural crops
- (4) Bait for non-commercial fishermen
- (5) Materials for construction, repair or maintenance of an animal waste storage facility for which a certified nutrient management plan is not in place.

### Misuse of Affidavit of Exempt Use

Purchasers who avoid payment of tax through deliberate misuse of this affidavit of exempt use may be subject to criminal prosecution.

### Additional Information

Please see Sales, Fuel & Special Tax Division Instructional Bulletin No. 45 (Commercial Agricultural Production), Bulletin No. 44 (Commercial Fishing) or Bulletin No. 49 (Commercial Aquacultural Production) for details regarding other exemptions available to farmers and fishermen. Requests for information on specific situations should be made in writing, should contain all relevant facts and should be directed to:

MAINE REVENUE SERVICES  
SALES, FUEL AND SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, MAINE 04332-1060  
TEL. NO. (207) 624-9693

Or visit our website at: [www.maine.gov/revenue](http://www.maine.gov/revenue)

January 10, 2011